89- 1638

Supreme Court, U.S.
FILED
APR 25 1990
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

MICHAEL EWING,

Petitioner,

VS.

CITYTRUST,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

DION W. MOORE
Counsel for Respondent
WILLIAMS, COONEY & SHEEHY
One Lafayette Cirlce
Bridgeport, CT 06604
(203-331-0888)

BEST AVAILABLE COPY

TABLE OF CONTENTS

Page

OPINION BELOW..... 1

QUESTIONS PRESENTED..... 2

STATEMENT OF CASE..... 2

POINT I:

There are no special or important reasons for review.. 4

CONCLUSION..... 7

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1989

MICHAEL EWING,
Petitioner,

VS.

CITYTRUST,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Citytrust, your respondent, hereby opposes petitioner's prayer for writ of certiorari dated April 16, 1990 and requests that it be denied.

OPINION BELOW

The opinion below is reported at 892 F. 2nd 168 and, on its face, involves the discretion given to a fiduciary, under

state law, to invest and/or invade the corpus of testamentary and inter vivos trusts. It involves no federal issue, constitutional claim, or matter of federal concern.

QUESTIONS PRESENTED

1. Does the petition present any special and important reasons for review by this Court?

STATEMENT OF CASE

This case involves the discretionary powers given to a trustee, under Connecticut law, to make investments and to invade principal. The underlying instruments, both inter vivos and testamentary trust, provided that Citytrust, the corporate trustee, had the power to invest and reinvest in any property "without liability on account thereof", and, in addition, had the power to invest and

reinvest without restriction or limitation and could invade principal "for any reason."

Both the District Court and the Court of Appeals correctly applied the underlying Connecticut law and held that Citytrust had not abused the discretionary powers given to it under the trust instruments in connection with its investment policies. The Court of Appeals also held that the language of the testamentary trust which authorized Citytrust, as trustee, to invade the principal for any reason in its discretion for the benefit of the named beneficiaries, was sufficiently broad, under Connecticut law, to permit the invasion of the principal of the trust where there was a benefit to the beneficiary.

All issues concerning the fiduciary powers were fully briefed, considered, and argued before the Court of Appeals. The suggestion of the petitioner that the Court of Appeals failed to read his brief denying him his Fifth Amendment due process rights is inaccurate and irresponsible. Indeed, the frivolousness of the petition, combined with its attack on the Court of Appeals, should warrant sanctions.

REASONS FOR DENYING WRIT

POINT I.

There are no special or important reasons for review.

This Court should not, and will not, grant a petition for writ of certiorari unless there are presented special and important reasons therefore. Rule 19-Rules of the Supreme Court of the United States. As noted, the instant case involves the

effect of discretionary powers given to a fiduciary under trust documents construed under the laws of the State of Connecticut. It presents no federal or constitutional issue, presents no conflict with other decisions, state or federal, and involves absolutely no federal issue. As such, there are simply no reasons presented in the petition which would be sufficient to grant the petition for certiorari.

The petitioner appears to suggest that the guarantees of due process given under the Fifth Amendment were placed in jeopardy because the Court of Appeals did not read his brief or consider his arguments. This is a gross misrepresentation of fact. The panel of the Court of Appeals heard oral argument, evidenced a thorough knowledge of

the underlying record, carefully inquired of petitioner's counsel concerning his unique theories, and ultimately decided the case based upon the long standing law in Connecticut with respect to discretionary powers given to a fiduciary.

To suggest that the conduct of the Court of Appeals constituted a departure from the accepted and usual course of judicial proceedings, requiring Supreme Court supervision, is ludicrous. While such irresponsible allegations might be condoned by a pro se litigant, they should not be condoned when they are made by an attorney who, presumably, has been admitted to practice before this Court.

CONCLUSION

For the above reasons, the petition for writ of certiorari should be denied.

THE DEFENDANT,
BY DION W. MOORE
Williams, Cooney & Sheehy,
One Lafayette Circle,
Bridgeport, Connecticut 06604